

AMENDED IN SENATE FEBRUARY 23, 2009

SENATE BILL

No. 46

**Introduced by ~~Senators Alquist, Florez, Maldonado, and Pavley~~
*Senator Alquist***

(Principal coauthor: Senator Correa)

***(Coauthors: Senators Benoit, Florez, Maldonado, Pavley, Wiggins,
and Yee)***

***(Coauthors: Assembly Members Bill Berryhill, Lieu, Monning, Niello,
Portantino, Smyth, and Torlakson)***

January 7, 2009

An act to amend ~~Sections 799 and 803~~ *Section 799* of the Penal Code,
relating to statutes of limitation.

LEGISLATIVE COUNSEL'S DIGEST

SB 46, as amended, Alquist. Sex offenders: commencing trial: time.

Existing law provides that the prosecution of an offense punishable by death or by imprisonment in the state prison for life or for life without the possibility of parole, or for the embezzlement of public money, may be commenced at any time.

This bill would add specified sex offenses, including rape, sodomy, lewd or lascivious acts, oral copulation, continuous sexual abuse of a child, ~~forcible and~~ acts of sexual penetration, ~~and flight of a sex offender to avoid prosecution~~, to the list of crimes for which there is no statute of limitation for prosecution. ~~The bill would make conforming changes to related provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 799 of the Penal Code is amended to read:

799. (a) Prosecution for any of the following may be commenced at any time:

(1) Offenses punishable by death.

(2) Offenses punishable by imprisonment in the state prison for life.

(3) Offenses punishable by imprisonment in the state prison for life without possibility of parole.

(4) Offenses relating to the embezzlement of public money.

(5) Offenses described in Section 261, 286, 288, 288a, 288.5, 289, or ~~289.5~~ *former Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.*

(b) This section shall apply in any case in which the defendant was a minor at the time of the commission of the offense and the prosecuting attorney could have petitioned the court for a fitness hearing pursuant to Section 707 of the Welfare and Institutions Code.

~~SEC. 2. Section 803 of the Penal Code is amended to read:~~

~~803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.~~

~~(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.~~

~~(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:~~

~~(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.~~

~~(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.~~

1 ~~(3) A violation of Section 25540, of any type, or Section 25541~~
2 ~~of the Corporations Code.~~

3 ~~(4) A violation of Section 1090 or 27443 of the Government~~
4 ~~Code.~~

5 ~~(5) Felony welfare fraud or Medi-Cal fraud in violation of~~
6 ~~Section 11483 or 14107 of the Welfare and Institutions Code.~~

7 ~~(6) Felony insurance fraud in violation of Section 548 or 550~~
8 ~~of this code or former Section 1871.1, or Section 1871.4, of the~~
9 ~~Insurance Code.~~

10 ~~(7) A violation of Section 580, 581, 582, 583, or 584 of the~~
11 ~~Business and Professions Code.~~

12 ~~(8) A violation of Section 22430 of the Business and Professions~~
13 ~~Code.~~

14 ~~(9) A violation of Section 10690 of the Health and Safety Code.~~

15 ~~(10) A violation of Section 529a.~~

16 ~~(11) A violation of subdivision (d) or (e) of Section 368.~~

17 ~~(d) If the defendant is out of the state when or after the offense~~
18 ~~is committed, the prosecution may be commenced as provided in~~
19 ~~Section 804 within the limitations of time prescribed by this~~
20 ~~chapter, and no time up to a maximum of three years during which~~
21 ~~the defendant is not within the state shall be a part of those~~
22 ~~limitations.~~

23 ~~(e) A limitation of time prescribed in this chapter does not~~
24 ~~commence to run until the offense has been discovered, or could~~
25 ~~have reasonably been discovered, with regard to offenses under~~
26 ~~Division 7 (commencing with Section 13000) of the Water Code,~~
27 ~~under Chapter 6.5 (commencing with Section 25100) of, Chapter~~
28 ~~6.7 (commencing with Section 25280) of, or Chapter 6.8~~
29 ~~(commencing with Section 25300) of, Division 20 of, or Part 4~~
30 ~~(commencing with Section 41500) of Division 26 of, the Health~~
31 ~~and Safety Code, or under Section 386, or offenses under Chapter~~
32 ~~5 (commencing with Section 2000) of Division 2 of, Chapter 9~~
33 ~~(commencing with Section 4000) of Division 2 of, Section 6126~~
34 ~~of, Chapter 10 (commencing with Section 7301) of Division 3 of,~~
35 ~~or Chapter 19.5 (commencing with Section 22440) of Division 8~~
36 ~~of, the Business and Professions Code.~~

37 ~~(f) (1) Notwithstanding any other limitation of time described~~
38 ~~in this chapter, a criminal complaint may be filed within one year~~
39 ~~of the date on which the identity of the suspect is conclusively~~

1 established by DNA testing, if both of the following conditions
2 are met:

3 (A) The crime is one that is described in subdivision (c) of
4 Section 290.

5 (B) The offense was committed prior to January 1, 2001, and
6 biological evidence collected in connection with the offense is
7 analyzed for DNA type no later than January 1, 2004, or the offense
8 was committed on or after January 1, 2001, and biological evidence
9 collected in connection with the offense is analyzed for DNA type
10 no later than two years from the date of the offense.

11 (2) For purposes of this section, “DNA” means deoxyribonucleic
12 acid.

13 (g) For any crime, the proof of which depends substantially
14 upon evidence that was seized under a warrant, but which is
15 unavailable to the prosecuting authority under the procedures
16 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
17 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
18 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
19 claims of evidentiary privilege or attorney work product, the
20 limitation of time prescribed in this chapter shall be tolled from
21 the time of the seizure until final disclosure of the evidence to the
22 prosecuting authority. Nothing in this section otherwise affects
23 the definition or applicability of any evidentiary privilege or
24 attorney work product.